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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM 1982

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

SUPPLEMENTAL BRIEF OF RESPONDENT

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November 15, 1983

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By letter from the Clerk of the Supreme Court of the United States, the Court has requested supplemental briefs addressing three questions. The first section of this Brief will answer those three questions. The second section will present Respondent's arguments elicited by the Court's third question.

QUESTIONS AND RESPONSES

Question 1:

Did the original compensation agreement between Petitioner and Respondent receive judicial approval in accordance with TENN. CODE ANN. § 50-6-206?

Response 1:

No. The record contains no evidence of judicial approval of the original compensation agreement which was entered into in Tennessee. In addition, Respondent states that there was no such judicial approval. Furthermore, Respondent has conferred with Petitioner who agrees that there was no such judicial approval.

Question 2:

Has Petitioner secured any final judgment against Respondent from any Tennessee Court?

Response 2:

No. The only judicial action commenced by either party is Petitioner's Complaint which seeks "a determination as to whether it has any further responsibilities under the Workmen's Compensation Act of the State of Tennessee for further compensation or as an alternative to be dismissed from any further benefits under the Workmen's Compensation Act of the State of Tennessee." (J-A-30-33) Respondent has confirmed with Petitioner that no judgment has been entered in that action which was instituted by Petitioner after unilateral suspension of Tennessee benefits.

Question 3:

Is the mere acceptance of compensation pursuant to

an unapproved agreement filed with the Tennessee Department of Labor sufficient to render the agreement binding on the parties in Tennessee for purposes of application of the full faith and credit clause?

Response 3:

No. The Court is referred respectfully to the argument and citation of authority set forth *infra*.

ARGUMENT AND CITATION OF AUTHORITY

ACCEPTANCE OF COMPENSATION PURSUANT TO AN UNAPPROVED COMPENSATION AGREEMENT IS NOT SUFFICIENT TO RENDER THE AGREEMENT BINDING FOR THE PURPOSE OF APPLYING THE FULL FAITH AND CREDIT CLAUSE

Respondent has demonstrated in its main brief that the Full Faith and Credit Clause does not bar the subject Georgia proceedings regardless of either the nature of the Tennessee proceedings or the alleged effect of Tennessee's exclusive remedy statute. Questions posed by this Court in its request for supplemental briefs have alerted Respondent to an additional reason against applying the Full Faith and Credit Clause.

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), this Court was faced with a situation in which an employee sought Louisiana Worker's Compensation benefits after having received a Texas award which had become "final in accordance with the terms of the Texas statute." *Id.* at 433. The majority in *Magnolia* applied

the Full Faith and Credit Clause because "we can perceive no tenable ground for saying that a compensation award need not be given the same effect as res judicata in another state as it has in the state where rendered." *Id.* at 441. Additionally, the Court stated: "And if the award of compensation in Texas were not res judicata there, full faith and credit would, of course, be no bar to the recovery of an award in another state." *Id.* at 443.[1]

In the case at bar, Tennessee law demonstrates that there has been no agreement, award, proceeding or judgment to which either res judicata or full faith and credit applies. TENN. CODE ANN. § 50-6-206 (1983) [formerly codified at TENN. CODE ANN. § 50-1006 (1977)] reads, in relevant part, as follows:[2]

> The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or of the chancery court or criminal court of the county where the claim for compensation is entitled to be made.

This statute applies not only to "settlements" in the broad sense of that word, but also to agreements identical to the one in the case at bar.

In *Moore v. Hines*, 170 Tenn. 456, 95 S.W.2d 928 (1936), the employee had been receiving weekly compensation benefits after he and his employer's insurance carrier had entered into an agreement virtually identical to the agreement between Respondent and Petitioner.

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[1] *See also Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 292 (1980) (Rehnquist, J., dissenting) ("The present case involves an enforceable *judgment* entered by Virginia after adjudicatory proceedings.")

[2] The quoted language is identical in both the 1983 and 1977 Tennessee codes.

The agreement in the *Moore* case is set out on page 1a of the Appendix to this Brief; the agreement between Petitioner and Respondent is set out at pages 28-29 of the Joint Appendix. Neither of these agreements purport to be lump sum settlements of the entire worker's compensation claim. Nevertheless, the Tennessee Supreme Court in *Moore* cited the predecessor statute to TENN. CODE ANN. § 50-6-206, noted that the agreement had not been approved by a court, and held that "[i]t was accordingly not binding on the insurer, employer, nor the employee." 95 S.W.2d 931.

With there being no award, proceeding, or judgment to which the theory of res judicata might attach, the Full Faith and Credit Clause did not bar the State of Georgia from granting supplemental worker's compensation benefits to Petitioner even under the narrow constraints of *Magnolia*.[3]

Respondent anticipates that Petitioner will argue that, despite the lack of an approved agreement, the Georgia courts must give full faith and credit to Tennessee's "exclusive remedy" statute as applied by the Tennessee

[3] Additional support for this argument might also be found in TENN. CODE ANN. § 50-6-205(d) (1983) [formerly codified at TENN. CODE ANN. § 50-1005 (1977)]. That statute provides that if payments are made without an award, the employer may controvert liability by filing a notice within fifteen (15) days of the due date of the first omitted payment. Said statute goes on to read as follows:

> In such cases the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; *nor shall the acceptance of compensation by the employee be considered a binding determination of his rights.*

(emphasis added) Respondent has been unable to find any judicial interpretation of this statute.

courts. Respondent has countered those arguments in its earlier brief;[4] the lack of an approved agreement further negates this line of argument by Petitioner. Petitioner earlier has referred to his interpretation of Tennessee's "exclusive remedy" statute and the Tennessee case law as Tennessee's "irrevocable election doctrine." [5] Assuming, *arguendo*, that Tennessee has such a doctrine, it strains reason to believe that a Tennessee court would apply that doctrine to a situation where the "election" – respondents' signing the agreement – was a nullity. *Moore v. Hines*, *supra*, and those Tennessee cases dealing with unapproved lump sum settlements demonstrate that the Tennessee courts are implacable in their refusal to give effect to unapproved agreements.[6]

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[4] *See* Brief of Respondent, pp. 13-16.

[5] Petition for Writ of Certiorari to the Supreme Court of Georgia, No. 82-1367, pp. 8-9.

[6] *See, e.g., Sherlin v. Liberty Mutual Ins. Co.*, 584 S.W.2d 455 (Tenn. 1979); *Gross v. National Health Enterprises, Inc.*, 582 S.W.2d 379 (Tenn. 1979).

CONCLUSION

The compensation agreement signed by Respondent is the very foundation upon which all of Petitioner's arguments are built. Because that agreement was not approved by a Tennessee court, there is absolutely nothing to which the Full Faith and Credit Clause might be applied.

Respondent respectfully urges the Court either to dismiss Petitioner's writ of certiorari as improvidently granted or, upon consideration of the merits, to affirm the decision of the Court of Appeals of Georgia.

Respectfully submitted,

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By: _____

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November 15, 1983

APPENDIX

"Memorandum of Agreement to Pay Compensation under 'Workmen's Compensation Act' of Tennessee

"In re: George Moore, Employer

"A. G. Hines, Employe.

"This Agreement, made and entered into this 24th day of September, 1930, by and between A. G. Hines and Union Indemnity Company that in settlement of compensation for injury sustained by A. G. Hines on or about the 26th day of August, 1930, while in the service of George Moore by an accident arising out of and in the course of said employment,

"The said A. G. Hines shall receive compensation at the rate of $9.58 per week, the same being 50 per cent of his average weekly wages as computed according to terms of the 'Workmen's Compensation Act of Tennessee,' and that said compensation shall be payable from 3rd day of September, 1930, until terminated in accordance with the provisions of said Act, as for a total of ____ weeks.

"It is herewith stated as an essential part of this Memorandum of Agreement, that its terms and provisions are in full accord with Section 7, 27, and 35 of the 'Workmen's Compensation Act' of Tennessee."

After the signatures on the agreement appears the following:

"Note: This agreement is subject to approval and review by the Judge of the Circuit Court of the County in which the claim arises, a copy to be forwarded to State Department of Labor, Division of Workmen's Compensation, Nashville, Tennessee."

Moore v. Hines, 95 S.W.2d 928, 929 (Tenn. 1936).